

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Chris Langer,

Plaintiff,

v.

Paul A. Swerdlove, in his individual
and representative capacity as trustee
of the Swerdlove Paul A. Trust (12-
15-94);

Yogurt Baby, Inc., a California
Corporation; and Does 1-10,

Defendants.

Case No. '14CV2473 JAH BGS

**Complaint For Damages And
Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act;
California Disabled Persons Act;
Negligence**

Plaintiff Chris Langer complains of Defendants Paul A. Swerdlove, in his individual and representative capacity as trustee of the Swerdlove Paul A. Trust (12-15-94); Yogurt Baby, Inc., a California Corporation; and Does 1-10 ("Defendants") and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is a paraplegic who cannot walk and who uses a wheelchair for mobility. He has

1 a specially equipped van with a ramp that deploys out of the passenger side
2 of his van and he has a Disabled Person Parking Placard issued to him by the
3 State of California.

4 2. Defendants are, or were at the time of the incidents, the real property
5 owners, business operators, lessors and/or lessees for the Yogurt Escape shop
6 (“Shop”) located at or about 942 Orange Avenue, Coronado, California.

7 3. Plaintiff does not know the true names of Defendants, their business
8 capacities, their ownership connection to the property and business, or their
9 relative responsibilities in causing the access violations herein complained
10 of, and alleges a joint venture and common enterprise by all such
11 Defendants. Plaintiff is informed and believes that each of the Defendants
12 herein, including Does 1 through 10, inclusive, is responsible in some
13 capacity for the events herein alleged, or is a necessary party for obtaining
14 appropriate relief. Plaintiff will seek leave to amend when the true names,
15 capacities, connections, and responsibilities of the Defendants and Does 1
16 through 10, inclusive, are ascertained.

17
18 **JURISDICTION & VENUE:**

19 4. This Court has subject matter jurisdiction over this action pursuant to
20 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans
21 with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

22 5. Pursuant to pendant jurisdiction, an attendant and related cause of
23 action, arising from the same nucleus of operative facts and arising out of
24 the same transactions, is also brought under California’s Unruh Civil Rights
25 Act, and the California Disabled Persons Act, which acts expressly
26 incorporate the Americans with Disabilities Act.

27 6. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
28 founded on the fact that the real property which is the subject of this action

1 is located in this district and that Plaintiff's cause of action arose in this
2 district.

3
4 **FACTUAL ALLEGATIONS:**

5 7. The Plaintiff went to the Shop in April of 2014 to eat.

6 8. The Shop is a facility open to the public, a place of public
7 accommodation, and a business establishment.

8 9. Parking spaces are one of the facilities, privileges and advantages
9 offered by defendants to their customers at the Shop.

10 10. Unfortunately, although parking spaces are one of the facilities
11 available to patrons of the Shop, there is not a single compliant handicap
12 parking space available for disabled persons.

13 11. Plaintiff alleges that a fully compliant accessible parking space once
14 existed at this location but the parking space has been allowed to fade away
15 to the point that it is no longer available for use by disabled persons.
16 Because of defendants' lack of maintenance and care, the accessible parking
17 space is no longer available for use by disabled persons.

18 12. Defendants have no policy or procedure in place to make sure that the
19 accessible parking spaces remain useable in the parking lot. As such, the
20 parking space reserved for disabled persons is no longer available for
21 disabled customers.

22 13. The plaintiff personally encountered this problem. This inaccessible
23 condition denied the plaintiff full and equal access and caused him difficulty
24 and frustration.

25 14. Plaintiff would like to return and patronize the Shop but will be
26 deterred from visiting until the defendants cure the violation. Plaintiff lives
27 in San Diego County and shops at various places around the county.
28 Businesses in San Diego are conveniently located for plaintiff. Because of

1 the location of the Shop, plaintiff would like to return to the Shop in the
2 future.

3 15. The defendants have failed to maintain in working and useable
4 conditions those features required to provide ready access to persons with
5 disabilities.

6 16. Given the obvious and blatant violations, the plaintiff alleges, on
7 information and belief, that there are other violations and barriers on the site
8 that relate to his disability. Plaintiff will amend the complaint, to provide
9 proper notice regarding the scope of this lawsuit, once he conducts a site
10 inspection. However, please be on notice that the plaintiff seeks to have all
11 barriers related to his disability remedied. See *Doran v. 7-11*, 506 F.3d 1191
12 (9th Cir. 2007) (holding that once a plaintiff encounters one barrier at a site,
13 he can sue to have all barriers that relate to his disability removed regardless
14 of whether he personally encountered them).

15 17. Additionally, on information and belief, the plaintiff alleges that the
16 failure to remove these barriers was intentional because: (1) these particular
17 barriers are intuitive and obvious; (2) the defendants exercised control and
18 dominion over the conditions at this location and, therefore, the lack of
19 accessible facilities was not an “accident” because had the defendants
20 intended any other configuration, they had the means and ability to make the
21 change.

22
23 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
24 **WITH DISABILITIES ACT OF 1990** (On behalf of plaintiffs and against
25 all defendants (42 U.S.C. section 12101, et seq.)

26 18. Plaintiff repleads and incorporates by reference, as if fully set forth
27 again herein, the allegations contained in all prior paragraphs of this
28 complaint.

1 19. Under the ADA, it is an act of discrimination to fail to ensure that the
2 privileges, advantages, accommodations, facilities, goods and services of
3 any place of public accommodation is offered on a full and equal basis by
4 anyone who owns, leases, or operates a place of public accommodation. See
5 42 U.S.C. § 12182(a). Discrimination is defined, *inter alia*, as follows:

- 6 a. A failure to make reasonable modifications in policies, practices,
7 or procedures, when such modifications are necessary to afford
8 goods, services, facilities, privileges, advantages, or
9 accommodations to individuals with disabilities, unless the
10 accommodation would work a fundamental alteration of those
11 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 12 b. A failure to remove architectural barriers where such removal is
13 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
14 defined by reference to the ADAAG, found at 28 C.F.R., Part
15 36, Appendix “D.”
- 16 c. A failure to make alterations in such a manner that, to the
17 maximum extent feasible, the altered portions of the facility are
18 readily accessible to and usable by individuals with disabilities,
19 including individuals who use wheelchairs or to ensure that, to
20 the maximum extent feasible, the path of travel to the altered
21 area and the bathrooms, telephones, and drinking fountains
22 serving the altered area, are readily accessible to and usable by
23 individuals with disabilities. 42 U.S.C. § 12183(a)(2).

24 20. Any business that provides parking spaces must provide handicap
25 parking spaces. 1991 Standards § 4.1.2(5); 2010 Standards § 208. One in
26 every eight of those handicap parking spaces but not less than one must be a
27 “van” accessible parking space, *i.e.*, having an eight foot access aisle. 1991
28 Standards § 4.1.2(5)(b). Under the 2010 Standards, one in every six

1 accessible parking spaces must be van accessible. 2010 Standards § 208.2.4.

2 21. Here, the lack of a handicap-accessible parking space is a violation of
3 the law.

4 22. A public accommodation must maintain in operable working
5 condition those features of its facilities and equipment that are required to be
6 readily accessible to and usable by persons with disabilities. 28 C.F.R. §
7 36.211(a).

8 23. Here, the failure to ensure that the accessible facilities were available
9 and ready to be used by the plaintiff is a violation of the law.

10
11 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH**
12 **CIVIL RIGHTS ACT** (On behalf of plaintiffs and against all defendants)
13 (Cal Civ § 51-53)

14 24. Plaintiff repleads and incorporates by reference, as if fully set forth
15 again herein, the allegations contained in all prior paragraphs of this
16 complaint.

17 25. Because the defendants violated the plaintiffs' rights under the ADA,
18 they also violated the Unruh Civil Rights Act and are liable for damages.
19 (Civ. Code § 51(f), 52(a).)

20 26. Because the violation of the Unruh Civil Rights Act resulted in
21 difficulty, discomfort or embarrassment for the plaintiffs, the defendants are
22 also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code §
23 55.56(a)-(c).)

24
25 **III. THIRD CAUSE OF ACTION: VIOLATION OF THE**
26 **CALIFORNIA DISABLED PERSONS ACT** (On behalf of plaintiffs and
27 against all defendants) (Cal Civ. § 54-54.8)

28 27. Plaintiff repleads and incorporates by reference, as if fully set forth

1 again herein, the allegations contained in all prior paragraphs of this
2 complaint.

3 28. Because the defendants violated the plaintiff's rights under the ADA,
4 they also violated the Disabled Persons Act and are liable for damages. (Civ.
5 Code § 54.1(d), 54.3(a).)

6 29. Because the violation of the Disabled Persons Act resulted in
7 difficulty, discomfort or embarrassment for the plaintiffs, the defendants are
8 also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code §
9 55.56(a)-(c).)

10
11 **IV. FOURTH CAUSE OF ACTION: NEGLIGENCE** (On behalf of
12 plaintiff and against all defendants)

13 30. Plaintiff repleads and incorporates by reference, as if fully set forth
14 again herein, the allegations contained in all prior paragraphs of this
15 complaint.

16 31. The Defendants had a general duty and a duty arising under the
17 Americans with Disabilities Act and the Unruh Civil Rights Act and
18 California Disabled Persons Act to provide safe, convenient, and accessible
19 facilities to the plaintiffs. Their breach of this duty, as alleged in the
20 preceding paragraphs, has caused injury and damage as alleged above.

21
22 **PRAYER:**

23 Wherefore, Plaintiff prays that this court award damages and provide
24 relief as follows:

25 1. For injunctive relief, compelling defendants to comply with the
26 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
27 Plaintiffs are not invoking section 55 of the California Civil Code and is not
28 seeking injunctive relief under the Disabled Persons Act at all.

1 2. Damages under the Unruh Civil Rights Act and/or the California
2 Disabled Persons Act which damages provide for actual damages and a
3 statutory minimum of \$4,000. Note: a plaintiff cannot recover under both
4 acts, simultaneously, and an election will be made prior to or at trial.

5 3. Reasonable attorney fees, litigation expenses and costs of suit,
6 pursuant to 42 U.S.C. § 12205; Cal. Civ. Code §§ 52 and 54.3.

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8 Dated: September 29, 2014 CENTER FOR DISABILITY ACCESS

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10 By: 

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12 Mark Potter, Esq.
13 Attorneys for Plaintiff
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